

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGELO M. BLACK,

Defendant-Appellant.

UNPUBLISHED
February 24, 2004

No. 243744
Wayne Circuit Court
LC No. 01-008719-01

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for assault with intent to murder, MCL 750.83. We affirm.

I. FACTS

The charge against defendant arose out of an incident on July 17, 2001, involving his comatose wife, Patricia Black, when she was in the intensive care unit of Heritage Hospital. At the time of the incident, defendant was a licensed practical nurse and had been estranged from his wife for over two years. Nurses testified that they became suspicious when defendant asked about Patricia and entered her room. Nurses observed defendant examine Patricia's IV tubing and look over her body. They saw that defendant pulled something out of his pant leg and approach the patient. They called security and went to the room where defendant was leaning over the patient. They asked him to leave and then turned back the sheets where they found an insulin syringe sticking in Patricia's hand.

It was stipulated that the syringe contained insulin. Dr. Marcel Elanjian testified that Patricia arrived at the hospital in a semi-comatose state with her blood sugar level over 1,000. Her insulin level was being checked every four to six hours. A full syringe holds 60 to 75 units of insulin. Administering 50 to 70 units of insulin subcutaneously to Patricia would have likely caused cardiac arrest.

II. STANDARD OF REVIEW

Defendant asserts that there was insufficient evidence to show that he intended to kill his estranged wife and the court erred in denying his motion for directed verdict. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must

view the evidence in a light most favorable to the prosecution and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

III. ANALYSIS

The elements of assault with intent to commit murder are: (1) an assault, (2) with the actual intent to kill, (3) which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The intent to kill may be proven by inference from any facts in evidence. *Id.* Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *Id.*

The trial court could reasonably infer that defendant knew that administration of the insulin could be fatal. Where defendant was caught in the act of injecting the victim with a full syringe of insulin, the court could infer that defendant intended to kill the victim.

Defendant also asserts that he was denied due process of law where the trial court abandoned the role of neutrality and became an advocate for the prosecutor. A trial court may call witnesses or may question witnesses in order to clarify testimony or elicit additional relevant information. MRE 614; *People v Moore*, 161 Mich App 615; 411 NW2d 797 (1987). The court must avoid any invasion of the prosecutor's role and exercise caution so that its questions will not be intimidating, argumentative, prejudicial, unfair or partial. *Id.* The court must remain the neutral and detached magistrate a defendant is entitled to expect in a criminal trial. *People v Conyers*, 194 Mich App 395, 398; 487 NW2d 787 (1992). Failure to timely object to the court's questioning of witnesses precludes appellate review in the absence of manifest injustice. *People v Smith*, 95 Mich App 492; 291 NW2d 91 (1980).

The complained of conduct does not show that defendant was denied a fair and impartial magistrate. Defendant did not object to any of the court's actions and they do not reflect abandonment of the judicial role. Where defendant received a bench trial, there was no danger of the court's questions influencing a jury. *People v Edwards*, 171 Mich App 613, 619; 431 NW2d 83 (1988).

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens